APPENDIX "A."

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 26573

SUMMARY CALENDAR*

THE EXCHANGE NATIONAL BANK OF ATCHISON,
Plaintiff-Appellant,

versus

THE HIBERNIA NATIONAL BANK OF NEW ORLEANS,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana

(February 13, 1969)

*Having studied the briefs and records, we have determined that this appeal is appropriate for summary disposition without argument. Pursuant to new Rule 18 of the Rules of the United States Court of Appeals for the Fifth Circuit, the Clerk of this Court has been directed to put this case on the summary calendar and notify the parties in writing. See for example No. 26,250, *Joe Y. Gamez vs. Dr. George J. Beto*, January 30, 1969 (. . . . F.2d . . . .).

Before COLEMAN, GOLDBERG, and SIMPSON, Circuit Judges.

PER CURIAM: The Exchange National Bank of Atchison, in the State of Kansas, sued the Hibernia National Bank of New Orleans for $50,000, plus Attorney's fees and costs. The District Court granted a motion to dismiss for failure to state a cause of action upon which relief could be granted, and we affirm.

An officer of Hibernia obtained a personal loan of $70,000 from Exchange. Twenty thousand was repaid but there was default as to the remainder. Plaintiff alleged that in 1961, 1962, and 1963 the officer had engaged in illegal banking activities which were brought to the attention of the defendant. He, nevertheless, was allowed to remain with Hibernia until December, 1963. Thus, said the plaintiff, the defendant, by continuing the employment, held the official out to be a person of honesty and integrity, relied upon in making the loan. It is asserted, therefore, that Hibernia is obligated to pay the debt.

It is to be noted that Exchange was not a customer or depositor of Hibernia. There is no allegation that the defendant was consulted about the loan or had any knowledge of it. Thus, it is obvious that plaintiff made the loan at its sole discretion. The loan was personal and the defendant was in no way a party to it.

Under these circumstances, we are compelled to agree with the District Court that there is no possible legal basis upon which Hibernia might be held liable.

By retaining the officer in its employ the bank did not represent or warrant to the appellant or anyone else that he could or would pay his personal debts, or that, upon default the bank would pay for him.

AFFIRMED.

APPENDIX "B."

Filed Mar. 11, 1969.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1968

No. 26573

D. C. Docket No. CA 67-1570 "A"
SUMMARY CALENDAR

THE EXCHANGE NATIONAL BANK OF ATCHISON,
Plaintiff-Appellant,

versus

THE HIBERNIA NATIONAL BANK OF NEW ORLEANS,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Louisiana.

Before COLEMAN, GOLDBERG and SIMPSON, Circuit Judges.

JUDGMENT.

This cause came on to be heard on the transcript of the record from the United States District Court for the

Eastern District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the plaintiff-appellant, The Exchange National Bank of Atchison, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

February 13, 1969

Issued as Mandate: Mar. 10, 1969.
A true copy:

Test:

EDWARD W. WADSWORTH,
Clerk, U. S. Court of Appeals,
Fifth Circuit,
By JACQUELYN ESPOSITO,
Deputy.

New Orleans, Louisiana.